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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/589,330	06/07/2000	Gary Chastine	9D-HR-19236	9742

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EXAMINER
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CIRIC, LJILJANA V

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 10/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/589,330

Applicant(s)  
Chastine et al.

Examiner  
Ljiljana V. Ciric *AVC*

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3753



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jun 7, 2000
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 16-94 is/are pending in the application.
- 4a) Of the above, claim(s) 38-52 and 73-94 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-37 and 53-72 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Nov 18, 2002 is/are a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 6 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group II, readable on claims 16 through 37 and 53 through 72 in Paper No. 11 is acknowledged. The traversal is on the ground(s) of the "overlapping nature" of the claims. This is not found persuasive because the applicant has failed to particularly and distinctly point out the errors in the examiner's requirement to restrict, such as by indicating that Groups II and III are not patentably distinct from each other.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 38 through 52 and 73 through 94 are hereby withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Group III, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 11.

### ***Drawings***

3. The drawings were received on November 18, 2002. These drawings are approved.

### ***Claim Objections***

4. Claim 35, 55, and 68 are objected to because of the following informalities: "between" should be inserted between "is" and "about" [claim 35, line 2; claim 55, line 2]; there is a slash (/) instead of a period (.) at the end of claim 68. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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6. Claims 22, 26 through 29, 32 through 37, 53 through 63, 65 through 69 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For example, it is not clear to which previously cited element the indeterminate term “thereto” in line 2 of claim 22 refers, thus rendering indefinite the metes and bounds of protection sought by the claim. Similarly, it is also not clear to which previously cited element the indeterminate term “therein” in line 2 of claim 28 refers, thus also rendering indefinite claim 28 and claim 29 depending therefrom.

Each of claims 26, 33, 34, 35, 36, and 37 appears to recite method steps (i.e., “said adapter apportioning”, “said air handler moving air”, etc.) in an apparatus claim, thus rendering the metes and bounds of protection sought by the claims indefinite.

There is insufficient antecedent basis for the limitation “said percentage” in line 2 of claim 27 since neither claim 27 nor claim 24 from which claim 27 depends previously cite a percentage.

It is not clear which particular structure, if any, is encompassed by the limitations “comprises a chill side and a thaw side” appearing in each of claims 32 and 65, thus rendering indefinite these claims and all claims depending therefrom with regard to the scope of protection sought.

The term “acceptable” in claim 34 is a relative term which renders the claim indefinite. The term “acceptable” is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Thus, as used to qualify the limits within which the surface temperature of a thawed item is to be kept, this term renders the same indeterminate. This same term appears in claim 54, similarly rendering indefinite claim 54 and all claims depending therefrom.

It is not clear what is meant by “an increased temperature relative to a fresh food compartment temperature” as recited in lines 5-6 of claim 53. In particular, it is not clear whether or not the limitation

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“a fresh food compartment temperature” refers to the temperature of the fresh food compartment cited in lines 1-2 of the claim.

Similarly, the term “optimal” in claim 66 is a relative term which renders the claim indefinite. The term “optimal” is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Thus, as used to qualify the positions in which the food and beverage items are to be oriented using the plurality of longitudinal members, this term renders the same indeterminate.

*Claim Rejections - 35 USC § 102*

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. As best can be understood in view of the indefiniteness of claims 22, 26 through 37, 53 through 63, 65 through 69, claims 16 through 19, 21 through 28, 30 through 37, 53, 54, 58 through 61, and 63 through 72 are rejected under 35 U.S.C. 102(b) as being anticipated by Peterson et al.

Peterson et al. discloses the invention essentially as claimed, including, for example: a slideable drawer or pan 40 configured for slide-out access as shown in Figures 17 and 18, the drawer or pan 40 comprising a tray or basket or rack 238 and/or 232; a heater element 82; an adapter or damper element or automatic baffle assembly 96; and, a fan 54 or 56. Generally, little or no patentable weight is given to functional or intended use limitations in the claims.

The reference thus reads on the claims.

9. Alternately for claims 16 through 19, 21 through 24, 29 through 37, 53, 54, 58, 60, 61, and 63 through 67, and as best can be understood in view of the indefiniteness of 22, 29 through 37, 53, 54, 58,

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60 through 63, and 65 through 67, claims 16 through 19, 21 through 24, 28 through 37, 53, 54, 58, 60 through 67 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Hearne.

O'Hearne discloses the invention essentially as claimed, including for example: a slideable pan or tray or shelf 70 as shown in Figures 7 and 5 configured for slide-out access; a foil-type heater element 52 [see column 3, line 31]; and, a fan 54. Generally, little or no patentable weight is given to functional or intended use limitations in the claims.

The reference thus reads on the claims.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peterson et al. (of record).

As described in greater detail above, Peterson et al. discloses the invention essentially as claimed, including a refrigerator pan or drawer 40 configured for slide-out access. While Peterson et al. does not specify the refrigerator pan or drawer 40 as comprising a light source, Official Notice is taken hereby that it is notoriously well-known in the art of designing refrigerators to include a light source in every storage compartment therein so that, if someone opens the door to that compartment, it is easy to see everything stored therein without using a flashlight or other supplemental light, for example.

Thus, it would have been obvious to modify the pan or drawer 40 of Peterson et al. by adding a light source therein in order to allow a user to see everything that is stored in the pan or drawer without having to carry a supplemental light (such as a flashlight) for that purpose.

12. Claims 55 through 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Hearne.

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As described in greater detail above, O'Hearne discloses the invention essentially as claimed, including a heating and cooling food server which is designed for both cooling and thawing out cold foods. While O'Hearne does not specify the proper thawing temperatures as being between about 40 and about 50 degrees Fahrenheit, as recited in claim 55, or more preferably, as being about 41 degrees Fahrenheit, Official Notice is taken hereby that it is known in the food handling art that thawing frozen foods, such as frozen turkeys, should preferably be done at a temperature of about 40 or 41 degrees Fahrenheit or possibly at a temperature a few degrees higher in order to allow thawing without any spoiling occurring. Cold food above about 50 degrees Fahrenheit is prone to spoiling.

Thus, it would have been obvious to one skilled in the art at the time of invention to modify the food handling apparatus of O'Hearne by specifying the thawing temperature range to be between about 40 degrees and about 50 degrees Fahrenheit in order to allow relatively quick thawing without raising the thawing food to a temperature at which the food would be start to spoil.

### *Conclusion*

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Holmes et al. and both Martin et al. references represent patent publications and patents belonging to the same patent family as the instant application.

Wyatt, Cohn et al., and General Electric Company each discloses a heating and/or cooling apparatus including convective heating and cooling.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Ciric, whose telephone number is (703) 308-3925.

While she works a flexible schedule that varies from day to day and from week to week, Examiner Ciric may generally be reached at the Office during the work week between the hours of 10 a.m. and 6 p.m. ET.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett, can be reached on (703) 308-0101. The fax phone number is (703) 305-3463.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

Lvc

September 5, 2003



MILJANA V. CIRIC

PRIMARY EXAMINER

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